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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1944**

**No. 510-511**

**MARKET STREET RAILWAY COMPANY,**

*Appellant,*

*vs.*

**RAILROAD COMMISSION OF THE STATE OF CALI-  
FORNIA, FRANCK R. HAVENNER, C. C. BAKER,  
ET AL., ETC.**

**APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**STATEMENT OPPOSING JURISDICTION AND  
MOTION TO DISMISS OR AFFIRM**

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WYMAN C. KNAPP,  
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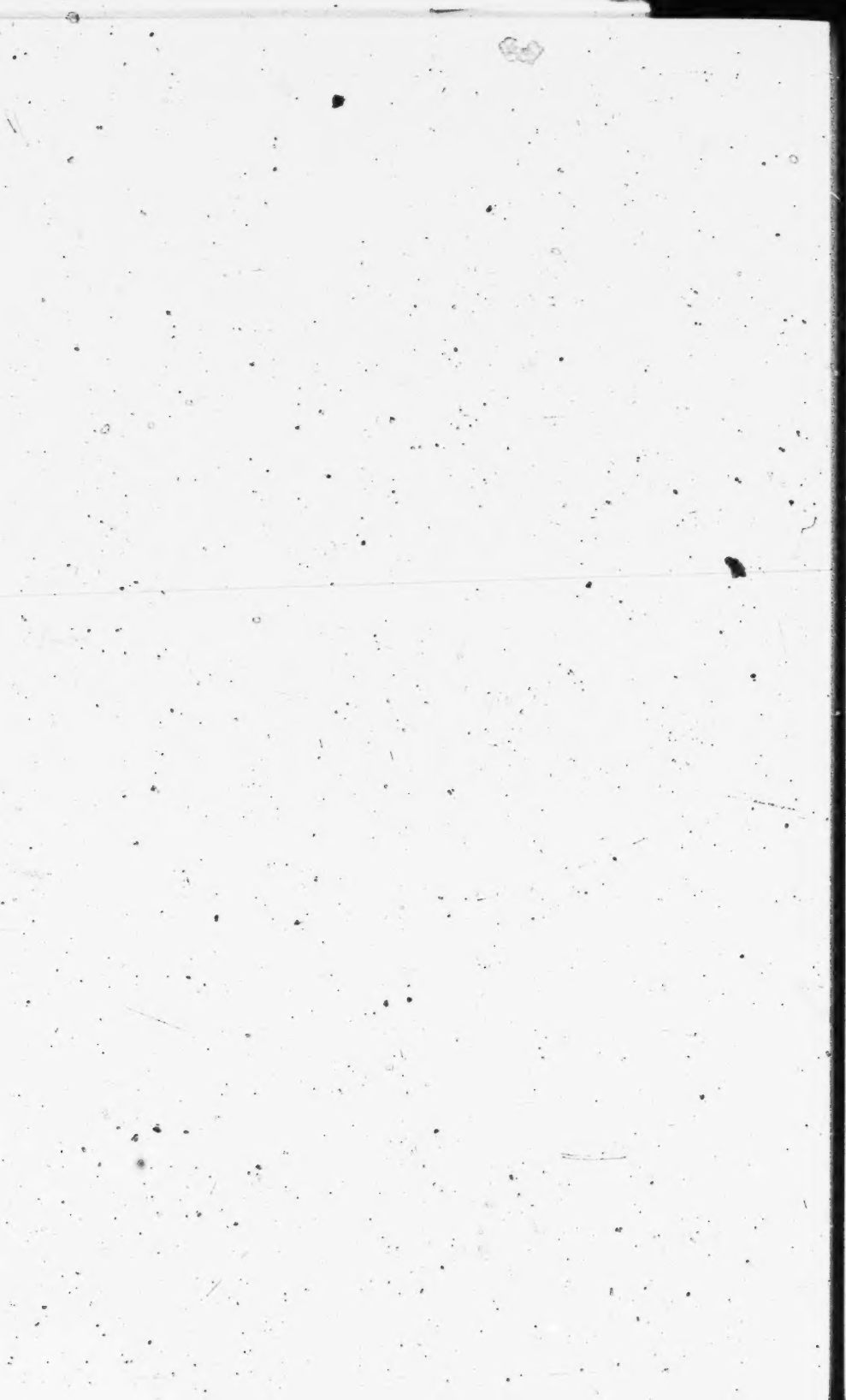
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SUPREME COURT OF THE UNITED STATES

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No. 510-511

MARKET STREET RAILWAY COMPANY,

vs.

*Appellant,*

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND FRANCK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE AND FRANK W. CLARK, THE MEMBERS OF AND CONSTITUTING THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

*Appellees.*

**STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM**

Come now appellees and file their statement in opposition to appellant's statement as to jurisdiction and hereby move the Court to dismiss the appeal herein or affirm the decision and judgment of the Supreme Court of the State of California, from which decision and judgment said appeal is taken.

**Appellant Was Accorded Due Process of Law**

Appellant complains that it was not placed on notice that reasonableness of rates was an issue in the proceeding be-

fore the appellee Railroad Commission. This contention is wholly without merit. The order instituting the investigation and proceeding out of which the rate reduction order in question issued contained the following provision:

"The Commission believing that public interest demands an inquiry into the *reasonableness of the rates*, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing,

"It Is Ordered that an investigation be and hereby is instituted upon the Commission's own motion into the *reasonableness of the rates*, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company; \* \* \*." (Emphasis supplied.) (P. 1 of Ex. A, Petitioner's Petition for Writ of Review.)

Also, the caption and title of this proceeding referred to the investigation as one involving the *reasonableness of the rates* and charges of appellant.

When this proceeding was called for its first hearing, the presiding Commissioner made the following statement:

"The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the *reasonableness of the rates* and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company." (Emphasis supplied.) (P. 2, Reporter's Transcript.)

This Court has held that an order instituting an investigation into the rates and charges of a public utility is sufficient to apprise such utility that the reasonableness of its rates is in issue even though the term "reasonableness" does not appear in said order, as is the case in the instant

der instituting the investigation and proceeding involved therein. In the case of *American Toll Bridge Company v. Railroad Commission of California*, 307 U. S. 486, at p. 492, this Court held as follows:

“The commission initiated the proceeding entitled ‘In the matter of the investigation upon the commission’s own motion, into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company covering its operations of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano;’ gave appellant notice that the investigation would extend to tolls for use of that bridge; . . .”

The following authorities are in line with the above holding:

*Nat’l Labor R. Board v. Mackay Radio & Tel. Co.*, 304 U. S. 333, 349;

*Railroad Commission of California v. Pacific Gas and Electric Co.*, 302 U. S. 388, 392, 393;

*Northwestern Bell Tel. Co. v. Nebraska State Ry. Co.*, 297 U. S. 471, 476, 477;

*People ex rel. N. Y. & Queens Gas Co. v. McCall*, 245 U. S. 345, 348, 349;

*Asbury Truck Co. v. Railroad Commission of California*, 52 F. (2d) 263; (Affirmed per curiam, 287 U. S. 570).

In the latter case the Court said, at page 268:

“To meet the requirements of due process of law, an administrative body, such as the defendant commission, need not follow any particular form of procedure. While it is essential that before one’s rights are determined a hearing of some kind must have been accorded, it is sufficient if the party affected is apprised of the nature of the hearing and is afforded the op-

portunity to offer evidence and to examine that of the opposition."

Appellant claims that the experimental nature of the rate reduction order involved herein denies it due process of law. This claim is likewise wholly without merit and has been decided adversely to the appellant by this Court in the case of *Clark's Ferry Bridge Co. v. Public Service Commission*, 291 U. S. 227, 241.

Mere infirmity in the procedure adopted by a regulatory commission is not sufficient to amount to a denial of due process. Mr. Chief Justice Hughes, speaking for this Court, in the case of *Railroad Commission of California v. Pacific Gas and Electric Company*, 302 U. S. 388, 394-395, and quoting with approval from the decision in the case of *West Ohio Gas Company v. Public Utilities Commission*, 294 U. S. 63, 70, lays down this rule as follows:

" 'Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the *totality* of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*So. R. Co. v. Virginia*, 290 U. S. 190; 78 L. ed. 260, 54 S. Ct. 148) to challenge the result, *there is no denial of due process, though the proceeding is shot through with irregularity or error.*' " (Emphasis supplied.)

We do not concede that any irregularity or error was committed by the appellee Railroad Commission in the proceeding before it but, if there had been such error, it would not constitute a denial of due process if no confiscation be shown.

Appellant admits that it received due service of a copy of the order instituting the investigation and proceeding herein concerned. Therefore, it is submitted that the claim made by appellant that it was not placed upon notice that



reasonableness of rates would be an issue is completely without substance and the face of the record reflects that fact. Therefore, no substantial Federal question is presented on this alleged issue.

### **Order of Appellee Railroad Commission Did Not Result in Confiscation of Appellant's Property**

The allegation of appellant that the order of appellee Railroad Commission works a confiscation of its property is not supported by the record and creates no substantial Federal question. Appellees cite the following authorities in support of this proposition:

- Federal Power Commission v. Hope Natural Gas Co.*, 88 L. ed. Adv. Ops. 276, 283;
- Natural Gas Pipeline Co. v. Federal Power Commission*, 315 U. S. 575;
- Railroad Commission of California v. Pacific Gas and Electric Company*, 302 U. S. 388, 394;
- *Los Angeles Gas and Electric Corp. v. Railroad Commission of California*, 289 U. S. 287, 304, 305;
- West Ohio Gas Co. v. Public Utilities Commission*, 294 U. S. 63, 70;
- Lindheimer v. Ill. Bell Telephone Co.*, 292 U. S. 151, 175;
- San Diego L. & T. Co. v. Jasper*, 189 U. S. 439, 441;
- Market Street Railway Co. v. Railroad Commission of California*, 24 Adv. Cal. Reps. 377.

Mr. Justice Holmes, speaking for this Court in the case of *San Diego L. & T. Co. v. Jasper*, 189 U. S. at 441, puts the rule contended for by appellees in the following concise language:

“••• In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough

*if we cannot say that it was impossible for a fair-minded board to come to the result which was reached."* (Emphasis supplied.)

It is therefore submitted that under the rule laid down by this Court in the case of *Federal Power Commission v. Hope Natural Gas Co.*, supra, appellant has failed to carry the burden of proving confiscation by clear and convincing evidence and has failed to overcome the legal presumption of the validity and correctness of the rate reduction order herein involved and, this being true, has failed to show the existence of a substantial Federal question in this regard.

**The Appeal Herein Is Without Merit, There Being No Substantial Federal Question Involved**

Appellees contend that the record in this case discloses no substantial Federal question and, therefore, this Court is without jurisdiction of this cause. It is therefore submitted that appellees' motion herein to dismiss said appeal or affirm the judgment of the Supreme Court of California should be granted.

Wherefore, appellees pray that this Court refuse to note jurisdiction in this cause and that said appellees' motion to dismiss said appeal or affirm said judgment be granted.

Dated, San Francisco, California, this 3rd day of August, 1944.

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